

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: September 26, 2023

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File No. 23-0002-S73
Assignment No. 23-08-0421

SUBJECT: Resolution (Harris-Dawson – Raman) to SUPPORT legislative and/or administrative action to counter the effects of the recent Supreme Court decisions and restore affirmative action protections.

CLA RECOMMENDATION: Adopt Resolution (Harris-Dawson – Raman) to include in the City’s 2023-2024 Federal Legislative Program, SUPPORT for legislative and/or administrative action that would counter the effects of the Supreme Court decisions in the cases of *Students for Fair Admissions, Inc., v. President and Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina, et al.* and restore affirmative action protections that were in effect prior to these decisions.

SUMMARY

Resolution (Harris-Dawson – Raman), introduced on June 30, 2023, states that on June 29, 2023, the U.S. Supreme Court ruled that the affirmative action policies at Harvard College and the University of North Carolina were unconstitutional and violated the Equal Protection Clause of the 14th Amendment. The Resolution further informs that affirmative action refers to policies that ensure equal opportunity and prevent discrimination based on a broad range of identities, including race, creed, color, and national origin. Affirmative action policies at higher education institutions have increased the diversity of their student bodies by considering an applicant’s race for admission. The Motion states that rescinding affirmative action policies at higher education institutions will lead to a substantial decrease in representation of students of color, especially at elite schools. The Resolution therefore requests that the City support legislative and/or administrative actions to counter the effects of the recent Supreme Court decisions and restore affirmative action protections.

BACKGROUND

The term “affirmative action” was first linked with policies intended to advance racial equality and non-discrimination in 1961 by President John F. Kennedy who issued Executive Order 10925, which included a provision that government contractors “take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, creed, color, or national origin.” In 1968, gender was also added to the protected categories.

Affirmative action programs and policies were also established in educational settings in the 1960s. While prominent legal decisions in the 1950s found that segregation in public schools was unconstitutional, colleges and graduate schools in the U.S. remained predominantly white and male through the 1960s and 1970s. In 1968, Harvard College’s dean of admissions announced a commitment to enroll a substantially higher number of Black students than it had in the past, to achieve a student body more representative of

American society. Other institutions such as Yale, Columbia, and Princeton followed suit to also enroll more Black students at their campuses.

These policies were successful in increasing the enrollment of Black students. In 1955, one year after the *Brown v. Board of Education* decision, only 4.9 percent of college students ages 18 to 24 were Black. This figure rose to 6.5 percent over the next five years, but had dropped back to 4.9 percent by 1965. The percentage of enrolled Black college students began to climb steadily only after affirmative action policies were adopted, with Black students comprising 7.8 percent of students in 1970, 9.1 percent in 1980, and 11.3 percent in 1990. 12.5 percent of college students identified as Black or African American in 2023.

The recent Supreme Court decisions were not the first attempts to eliminate affirmative action programs and policies. In 1996, California voters approved Proposition 209 to end state affirmative action programs not only in education, but also in public employment and government contracting. The Proposition first took effect with the incoming class of 1998 and resulted in the reduced enrollment of Black and Latinx students by 40 percent at UCLA and UC Berkeley.

Since the passing of Proposition 209, the University of California and California State University systems have established new, race-neutral admissions policies to maintain diversity in their student bodies. Nonetheless, in an amicus brief sent to the Supreme Court in support of Harvard and UNC's race-based admissions programs, University of California chancellors said that years of developing alternative admissions policies have fallen short in meeting diversity and equity goals, especially at its most selective campuses, despite the investment more than a half-billion dollars on outreach and alternative admissions standards over the past 25 years.

Efforts to overturn Proposition 209 were rejected by 57 percent of California voters in 2020.

Support of federal legislation or administrative actions to restore affirmative action protections will enable higher education institutions in the U.S. to maintain racial diversity in their student bodies.

DEPARTMENTS NOTIFIED

Civil + Human Rights and Equity Department



Susan Oh
Analyst

Attachment: Resolution (Harris-Dawson – Raman)

RESOLUTION

RULES, ELECTIONS INTERGOVERNMENTAL RELATIONS

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council; and

WHEREAS, on June 29, 2023, the United States Supreme Court ruled that affirmative action policies at Harvard College and the University of North Carolina were unconstitutional and violated the Equal Protection Clause of the 14th Amendment; and

WHEREAS, affirmative action refers to policies that ensure equal opportunity and prevent discrimination based on a broad range of identities, including race, sex, gender, religion, national origin, and disability; and

WHEREAS, in 1961, President John F. Kennedy was the first president to link the term "affirmative action" with policies meant to advance racial equality when he issued Executive Order 10925, which included a provision that government contractors "take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, creed, color, or national origin;" and

WHEREAS, in 1968, after the assassination of Rev. Dr. Martin Luther King, Jr., Harvard College's dean of admissions announced a commitment to enrolling a substantially higher number of Black students than in the past, to reflect a student body more representative of American society; and

WHEREAS, affirmative action policies at higher education institutions have increased the diversity of their student bodies by considering an applicant's race for admission; and

WHEREAS, in 1996, California voters passed Proposition 209 to amend the California Constitution to prohibit discrimination against or the granting of preferential treatment to any individual group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting; and

WHEREAS, rescinding affirmative action policies at higher education institutions will lead to a substantial decrease in representation of students of color, especially at elite schools;

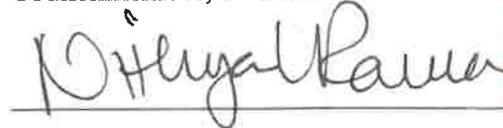
NOW, THEREFORE, BE IT RESOLVED, that by adoption of this Resolution, the City of Los Angeles hereby includes in its 2023-24 Federal Legislative Program sponsorship and support of any legislative and/or administrative action which would counter the effects of the Supreme Court rulings in the cases of *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina, et al.* and restore the affirmative action protections which were in effect prior to these decisions.

PRESENTED BY:



MARQUEECE HARRIS-DAWSON
Councilmember, 8th District

SECONDED BY:



ORIGINAL

